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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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INDONESIA: Recurring Torture Judicial System failed to address

The Asian Legal Resource Centre (ALRC) wishes to inform the UN Human Rights Council (UNHRC) regarding torture and other cruel inhuman or degrading treatment or punishment occurring in Indonesia at this time. We note that torture cases are sill serious problems in Indonesia, despite the fact that the Government has ratified the International Convention against Torture in 1998. Additionally, Indonesia has enacted some regulations in favor of eliminating torture. Three examples are: Government Regulation No. 92 2015 regarding Compensation for Victims of Wrongful Arrest; Law No. 16 2011 on Legal Aid; Military Chief Regulation (Peraturan Panglima TNI) No. 73/IX/2010 regarding Prohibition of Torture for military personnel. On their part, the Police also enacted two important regulations to prevent and prosecute torture. In this instance it is the National Chief Police Regulation (PERKAP) No. 8 2009 on the implementation of human rights principles for the Police and the National Chief Police Regulation No. 14 2012 on investigative procedures.

These regulations have yet to bring about a significant impact to strengthen the Criminal Justice System and prevent torture and ill-treatment in Indonesia. The ALRC sister organization, the Asian Human Rights Commission (AHRC) noted and reported that Police Officers and other State Apparatus personnel still commit torture in various forms and patterns. Torture not only occurs during the Investigative Process, but in some cases even outside the Police Station itself. Meanwhile, the quality of law enforcement against Police Officers who were involved in and committed torture is very weak. A very few cases have been prosecuted before the Criminal Court. Many other cases were brought to the Internal Ethic Mechanism (non-judicial process). The Police need to seriously strengthen their internal accountability. They need to make the law enforcement process within the Police Institution more accessible and accountable. The process is conducted by the National Police's internal affairs division (Propam), a law enforcement unit within the Police Institution

Recently, besides Police Officers, Prison Guards also perpetrated torture and ill-treatment. Take for example, the torture and extortion cases against Mr. Muhammad Ridwan, alias Deded. The situation occurred last year-2017 in Padang prison Class IIA, West Sumatera Province. Ridwan had been stripped naked, beaten and locked up in a dark room on the 3rd floor of the prison. The incident is related to the debt of IDR 600,000 racked up by prisoners. So far, there are no clear results from the Police Investigators in Padang. According to Padang Legal Aid (LBH Padang), a local Human Rights Organization handled the case. But, the victim's family preferred to negotiate with Police Investigators. This annulled the Power of Attorney previously given to the Padang Legal Aid to process the case. Unfortunately, this is the result of a strong influence exerted by the Police.

Subsequently, we will highlight torture and ill-treatment of persons which recently occurred in Papua in 2017. ALRC's sister organization, the Asian Human Rights Commission (AHRC) has documented and reported them. Take for example the following three torture cases against #1 Yunus Manauri, a senior high school student of grade X, Teluk Wondama Public school 01 (SMUN 01), West Papua Province #2 Mr. Saldi Hermanto, a journalist in Timika Papua, brutally attacked by Police Officers after a posting on his Facebook. He criticized the Police for failure to secure an entertainment show and guarantee security for visitors in Timika #3 Albert Nawipa (15 years old), a junior high school student. He was abducted, tortured by three Police Officers in Potikelek Market in Wamena and subsequently hospitalized. The police accused him of attacking a dancing show in Potikelek.

We do believe that above mentioned cases are more than enough to represent the situation and the picture of torture cases in Papua. The Police tend to use torture in enforcing the law. Lack of accountability and strict law enforcement is also contributing to the recurrence of torture cases in Papua and impunity for perpetrators.

Military Officers in Papua tortured and ill-treated civilians. Consider the physical and psychological pain of Mr. Niko Hisage when he was tortured on June 22, 2017. This assault was committed by army Sergeant Major Lucas and two other army personnel from the sub-district Military Command of Wamena city, Papua. Niko was viciously punched and beaten around the eyes causing bruising, swelling and closure of the eyes. Up until now, no clear investigative results have been forthcoming in this case.

Besides Papua, very recently the Military also tortured to death Mr. La Gode, a resident of Taliabu Island, North Moluccas Province. After being arrested by Police and detained in the Military Post of Task Force (Satgas) 732/Buana--Gode expired. He sustained serious injuries to his entire body, particularly on the back and lateral portions of his physique. After this written submission was given over, the Investigation remains on-going, conducted by the Ternate Military police (Denpom).

Besides the National Police, Military and Prison Guards, the Civil Service Police Unit (Satpol PP), tortured and perpetrated ill-treatment on civilians. The Police Unit handling public order under the Minister of Home Affairs, also committed torture and ill-treatment. Look at the forced dissolution of the Peaceful Public Protest organized on October 9, 2017 by environmental activists in the Mountain Slamet Banyumas Regency, Central Java Province. In total, 24 activists were illegally arrested, beaten and dragged to the local Police Station. As a result of this brutal attack, two protesters suffered serious injuries and were hospitalized in the local Banyumas Regency Hospital.

Torture recurs because there is no real reform in the Criminal Justice System. The reform which was declared and committed to by Police and the Military is merely normative. It hardly touches the problem on the national level. So far it is not clear whether or not the National Headquarters and the Branch Offices have the same standard and understanding about Fair Trial and Rule of Law standards. Revision of the Indonesian Penal Code in Parliament has been a long-time process. In the last ten years it achieved little progress. Parliament has just finished revising two chapters of the four chapters of the Penal Code. This means that Indonesia does NOT have a National Law that criminalizes torture as a serious crime. Accordingly, this circumstance has resulted in impunity and light punishments. Despite ratifying the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Indonesia still lacks a National Law to prosecute torture cases. The Penal Code (KUHP) does not explicitly recognize torture as a crime; it is merely seen as maltreatment, under Article 351.

The absence of lawyers also contributes to the practice of torture, in particular during the Police Investigation process. A case took place in 2017 regarding the torture of three men. Mr. Aris Winata Saputra, Mr. Bihin Charles and Mr. Herianto, were suspected of motorcycle theft. They were illegally detained and tortured in the Jakarta Metropolitan Police Custody (Tahanan Polda Metro Jaya), Jakarta. Here they were beaten repeatedly. One of the Officers smeared Aris' genitals with an unguent so painful it forced him to confess. The three suspects were brutally tortured, intimidated and forced to confess that they were involved in the motorcycle theft. Finally the pre-trial Judge of South Jakarta District Court annulled their suspect status. The Judges granted that the allegation of suspect to the plaintiffs is invalid, unlawful and un-enforceable. Furthermore, the search and seizures conducted upon the plaintiffs' houses is unlawful.

To its credit, Indonesia has enacted National Law No. 16 2011 on Legal Aid. It provides free legal aid service for poor people. The law was officially implemented in 2013 under the National Board of Legal Development (BPHN). This is a Government Office Unit with the Minister of Law and Human Rights operating the legal aid system. More than 200 legal aid organizations throughout Indonesia were funded by the Government to provide free legal aid. However, the free legal aid system has yet to contribute to fair trials. The cause? Many cases have proven that suspects still have no chance to access free lawyers in every judicial stage. Most of the victims of torture and fabricated cases are economically poor. They do not have enough money to hire lawyers. They have no information about free legal aid providers.

The lack of perspective and understanding about Fair Trial Principles is the main problem. The Indonesian Criminal Procedure Code (KUHAP), Article 184, clearly states that legal evidence materials consist of: #1. Testimony of a witness; #2. Information by an expert; #3. Letters (written document); #4. Indications or preliminary evidence; #5. Statement of Suspects or Defendants.

The Code procedure merely required legal evidence from two sources to charge the alleged perpetrators as suspects. It is clear that suspects or defendants statements are number five of the list, meaning it is the lowest priority of evidence. Other evidences are more important. Therefore, the Police must educate all Police Investigators that torture is absolutely prohibited and violates the LAW. The Investigator should obtain other legal evidence to charge the alleged perpetrators. Judges must be brave enough to refuse evidence obtained through illegal means. Judges must be brave enough to cancel a trial and order the Investigator and Prosecutor to present proper legal evidence. It is important to stop any illegal means, such as torture during the Investigation Process, to obtain a forced confession from the suspect.

In view of the above information, the ALRC puts forth this request. Have the Human Rights Council urge the Government of Indonesia to ensure prosecution of torture under Fair Trial Principles and to grant compensation for victims of torture. It is recognized that the Government has the Duty of Care to:

1. Immediately finish and enact the Amendment to the Indonesian Penal Code. Clearly include provision of punishment of torture under International Human Rights standards;
2. Guarantee prosecution and punishment of torture cases by not letting cases go unpunished;
3. Ensure adequate compensation for victims of torture. Strengthen the oversight mechanism upon Law Enforcement Agencies ensuring that abuse of power and misuse of authority afforded by LAW will not recur so easily;
4. Officially invite the UN Special Rappertour on Torture and other cruel inhuman or degrading treatment or punishment to visit Indonesia as soon as possible. Let him appraise the grass roots problem on the ground for himself and form his own opinion.